

SOUTH AFRICA'S MARITIME POLICY AND TRANSFORMATION OF THE SHIPPING INDUSTRY

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ABSTRACT

More than 95 per cent of South Africa's trade volume is seaborne. Although South Africa is clearly an important sea-trading nation, it is not a significant shipowning or ship operating nation. Despite a decade of democracy, and the improved Ship Registration Act of 1998, the South African merchant marine has continued to decline. South Africa's new Maritime Charter of December 2003 has the long-term vision "to develop South Africa to become one of the world's top 35 maritime nations by the year 2014". Currently, South Africa adopts a strongly market-driven shipping policy. In stark contrast the Charter calls for "a clear strategy/plan for the majority of South African cargo, going through South African ports to be carried on South African ships". This article argues that although South Africa has a large volume of trade, it does not necessarily have a competitive advantage in the shipment of these goods. Thus policies to promote or protect the national shipping industry might not be in the broader economic interests of South Africa.

Keywords: South Africa's Maritime Policy; Shipping Industry; Black Economic Empowerment; Maritime Charter.

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SOUTH AFRICA'S MARITIME POLICY AND TRANSFORMATION OF THE SHIPPING INDUSTRY

1. INTRODUCTION

With more than ninety five per cent of South Africa's trade volume seaborne or about eighty per cent in value terms, the country is strategically dependent upon the maritime transport industry (Siko, 1996: 4; Jones, 2004). South Africa's commercial ports and established international shipping network have served not only a strategic role of trade facilitation, but have also helped to shape the economic growth and development of the entire Southern African region. Measured in terms of cargo volumes, South African port traffic doubled from 40 million tons in 1969/70 to 80 million tons by 1977/78, and roughly doubled again to reach 160 million tons by the mid 1990s (Jones, 2002b: 144). By 2002, total cargo handled stood at some 190 million tons (Ports of Southern Africa and Mauritius, 2003), representing roughly 3.5 percent of world sea trade volumes (ISL, 2002). Due to South Africa's geographic location, substantial hauls are required to link this country to its major international markets and suppliers. Consequently, South Africa accounts for approximately six percent of global tonne-miles (Jones, 2002b).

Even though South Africa is clearly an important sea-trading nation, it is not a significant shipowning or ship operating nation. In February 2000, only six ships – owned by Safmarine – with a combined net registered tonnage of 87 140, could be considered South Africa's deepsea merchant marine, on the basis of flag or formal registration (Chasomeris 2003: 2). Numerous factors have led to this phenomenon, not least of which was apartheid and the restrictions placed upon South African vessels through economic sanctions. Yet despite a decade of democracy, and an improved legal environment brought about by the Ship Registration Act of 1998, the South African merchant marine has continued to decline. Furthermore, the decade has witnessed slow progress on the quest to empower, educate and integrate the vast majority of black South Africans who have historically been excluded from participating in South Africa's maritime economy.

On the 10th December 2003, representatives of the maritime industry met in Durban to formally sign South Africa's Black Economic Empowerment (BEE) Charter for the maritime transport industry. The overarching long-term vision of the maritime charter is "to develop South Africa to become one of the world's top 35 maritime nations by the year 2014." (BEE MTI, 2003: clause 2.1.1). In particular, the stated vision of the charter is to "substantially increase the number of SA flagged vessels and develop new South African shipping companies that are globally competitive..." (BEE MTI, 2003).

A means suggested to achieve this vision is captured in the following statement: "What we are calling for is a clear strategy/plan for the majority of South African cargo, going through South African ports to be carried on South African ships" (BEE MTI, 2003). More specifically, the measurable shorter term objective is "to persuade local cargo owners to increase the cargo carried on South African ships to 25,1% of the total within the next 5 years subject to review on an annual basis. Within 5 years, SA companies with particular focus on BEE companies should broker 25,1% of all cargo handled by brokers within the next 5 years, subject to review on an annual basis."

This article initiates an investigation into South Africa's maritime policy and the transformation of the national shipping industry. It provides a constructive critique of the long-term vision of the Maritime Charter on Black Economic Empowerment. Section two reflects upon the economic principles underlying maritime transport policy. With this understanding, section three outlines South Africa's liberal shipping policy. Section four investigates the legislative context of the BEE maritime charter before section five applies maritime theory and "international best practice" to present a constructive critique of the maritime charter's long-term vision. Conclusions are drawn in section six which provide a way forward to ensure the successful and sustainable transformation of South Africa's shipping industry.

2. ECONOMIC FREEDOM AND PRINCIPLES OF MARITIME TRANSPORT POLICY

The demand for vessel space is a derived demand; that is, transport services are demanded not for their own sake, but rather because transport has the ability to add value to commodities by moving them from areas of lower utility to areas of higher utility (Stopford, 1997: 226, Department of Transport, 1995: 5). The fundamental purpose of transport is therefore to bridge the gap between producers and consumers, and the more successfully transport fulfils its role, the smaller that gap will be. Consequently, the main thrust of transport policy in all transport modes should be to ensure that transport services are able to function in as efficient and effective manner as possible. The primary goal of maritime transport policy should thus be to ensure the provision of the appropriate quantity and quality of vessel space, and the appropriate range of port facilities at minimum cost. A further and important goal is to secure for South African interests an equitable stake in the seaborne commerce of the region, and fair access to international cross trades (Department of Transport, 1995: 5), within an international market framework that is as free of impediments as possible.

According to the Fraser Institute (2002, in Du Toit, 2002: 60), the core elements of economic freedom are personal choice, voluntary exchange, freedom to compete, and the protection of persons and property. Institutions and policies are consistent with economic freedom when they provide the infrastructure for voluntary exchange, and protect individuals and their property from aggressors using violence, coercion and fraud to seize property not belonging to them. Legal and monetary arrangements are particularly important; governments promote economic freedom when they provide a legal structure and law-enforcement system that protect property rights and impartially enforce contracts. However, economic freedom also requires governments to refrain from many activities, such as actions that interfere with personal choice, voluntary exchange, the freedom to enter and compete in labour and product markets, and to participate in business activities. Economic freedom is reduced when taxes, government expenditure, and rules and regulations are substituted for personal choice, voluntary exchange, free competition, and security of person and property rights.

Likewise, economic theory suggests that the transport sector can function most effectively if four basic economic principles are adhered to. These principles of economic freedom and equality are:

- (a) Freedom of transport users' choice across and within transport modes

- (b) Reliance on a free enterprise system in which market forces operate in as unconstrained a fashion as possible.
- (c) The removal wherever possible of market imperfections, such that markets operate on the basis of the correct price signals.
- (d) The equal treatment of all transport modes.

These principles underpinned all of the economic issues addressed by the Maritime Transport Working Group (Department of Transport, 1995), and likewise should be considered when assessing the current policies and issues surrounding the black economic empowerment Charter and vision for South Africa's maritime transport industry.

3. SOUTH AFRICA'S CURRENT SHIPPING POLICY

The importance of South Africa's sea trade and associated maritime policy has long been recognised, and has evolved through the centuries. Historical, socio-economic and political factors unique to South Africa, as well as the international shipping environment, have helped to mould South Africa's present shipping policy. In this article shipping policy is used broadly, referring to a range of policy tools and regulations applied to the maritime sector. "National shipping policies are normally intended to promote national flag fleets through various forms of preferential treatment such as fiscal advantages, direct subsidy of operations and construction, and through overtly protectionist measures such as reserving part of or even all cargo for national flag vessels" (Sletmo, 2002: 471). In a similar vein, Sturmev (1975, in Sletmo, 2002: 472) notes that: "A nation may be said to have a shipping policy when it encourages, permits, or formulates measures to interfere with or control the free play of market forces in regard to the employment of shipping. The inference or control may extend from *ad hoc* measures to a carefully planned and continuous policy."

Accordingly, the commercial shipping policy of a state is reflected in the legislative, administrative and economic measures which the state adopts towards shipowning and operation in the national economy and international markets for sea transport. While these measures may concern its own merchant fleet or be directed at foreign shipping, the effect will invariably have both domestic and international repercussions. For that reason, national shipping policies are not only domestic matters, but also matters of international concern (Floor, 1993: 5.1.1). The potential benefits of any shipping industry include a "contribution to its national economy in terms of its effects on the balance of payments, the employment opportunities it offers to seafarers and subsequently to shore based management activities, its value to shipping centres...and its backflow to the national government via taxes and value-added" (Marlow, 2002: 527).

In a study entitled "The international shipping industry and South Africa's seaborne trade," Jones (1987) analysed South Africa's maritime policy in the mid-1980s. Briefly, the potential regulatory measures which appeared to be impracticable or unnecessary at the time included: multi-lateral cargo sharing; direct cargo reservation; direct flag preference; direct subsidisation and the pursuit of discriminatory port tariffs (Jones, 1987: ix-xii). The study recognised the benefits of the freest possible trade environment, but also recognised that "second best" interventions might at times be appropriate in an imperfect trading world where many trading nations practice unilateral maritime

protectionism. These included the pursuit of bilateral agreements with those trading partners who might otherwise practise unilateral cargo reservation; the placing on the statute books of potentially retaliatory measures aimed at those states that discriminate against South African carriers; greater support for local carriers in respect of government cargoes; the pursuit of 'package' deals between landside transport operators and sea carriers; attempts to secure the shipment of a higher proportion of exports on a cif basis; and a change in the attitude of government towards the domestic shipping industry as a strategic asset whose reinforcement would be in the national interest (Jones, 1987: xii-xvi). Since that time, much of the shipping protectionism has evaporated.

The 1993 Report of the Committee of Enquiry into a National Maritime Policy for South Africa (the Floor Report, para 5.1.19) states: "the shipping policy of South Africa is currently more liberal than protectionistic". This is based on the notion that the maritime transport industry is a self-regulating transport mode that has historically produced services of sufficient quantity and quality to service the seaborne commerce needs of southern Africa (Jones, 2002a).

On the regulatory front, South Africa maintains one of the most liberal maritime policy regimes in the world (Jones, 2002a). In brief, it has:

- no Cabotage rules. The coastal trades are open to all flags and carriers, without this "open ports" policy in any way threatening domestic carriers.
- no multilateral, bilateral or unilateral cargo reservation. South Africa never acceded to the UNCTAD cargo-sharing formula. No cargoes are reserved for national ships.
- no flag preference or flag discrimination. In this regard, an "open ports" policy is practised; all vessels receive equal treatment in our ports, subject only to a "first planned, first served or first come, first served" approach.
- made no attempt to influence the terms of shipment of exports and imports.

The only area of formal state involvement with deepsea shipping was found in the area of Conference Liner shipping in the form of the so-called Ocean Freight Agreement (OFA), a long-standing tripartite agreement between the SAECS (South Africa Europe Container Service) carriers, the Government and the PPECB (Perishable Products Exports Control Board). In terms of this agreement:

- the Conference carriers agreed to provide a certain quality of service (vessels and vessel space - reefer);
- the PPECB agreed to support the conference via citrus and deciduous fruit exports;
- the government agreed to ship public sector cargoes on conference vessels and use moral suasion to generate support for the conference from private shippers (observed in the breach);
- floor and ceiling freight rates were re-negotiated annually.

The OFA was unique to the South Africa/Europe conference trade, and was not an example of flag preference: preference for certain cargoes was given to conference carriers of several nationalities (including South Africa), but there was no provision specifying shipment by any particular line, flag or vessel. At worst, it represented cargo preference for conference as opposed to non-conference carriers. The OFA had, however, been weakened by the partial withdrawal of the fruit export lobby (PPECB) which was securing its own independent transport arrangements to an increasing degree

(Jones, 2002a). In 1996, the Perishable Products Export Control Board was dismantled, leaving the northbound refrigerated cargo trade more open to market forces, and many shippers having to handle freight negotiations for the first time, with varied results (Pollington, SAECS Conference secretary, personal communications, March, 2003). There are no other maritime regulatory interventions in South Africa, other than the maintenance of safety standards.

4. THE BEE MARITIME CHARTER IN LEGISLATIVE CONTEXT

In South Africa, “black people” is a generic term which means Africans, Coloureds and Indians. In order to integrate the vast majority of black South Africans and effectively achieve the goals of black economic empowerment, government intervention is needed. Consequently, there is official legislation and government procurement policy that aims to promote the interests of the previously disadvantaged segments in society. There is also tremendous economic and socio-political pressure in South Africa today to conform to the National government desires, policies and laws surrounding affirmative action and black economic empowerment. Table 1 summarises a number of Acts introduced to help promote black economic empowerment.

Table 1: Acts promoting black economic empowerment.

| ACT | AIM |
|--|--|
| Preferential Procurement Policy Framework Act (2000) | To award various government contracts and tenders not only on price, capacity or track record but also on race, disability and gender. |
| National Empowerment Fund Act (1996) | To allow state funding so that black people may acquire some income-generating assets |
| The Employment Equity Act (1998) | To enforce race considerations in the hiring and promotion policies of anyone employing 50 people or more (or producing turnover above differing sectoral targets) To address unfair discrimination on the basis of sexual orientation, culture, religion or belief, HIV status, disability, etc. |
| Skills Development Act (1998) | To redress skills shortages among, in particular, black people |
| Basic Conditions of Employment Act (1997) | To oblige companies to report on their internal wage differentials and require them to narrow an undefined “disproportionate” wage gap between management and decision-making in the workplace |
| Labour Relations Act (1995) | To allow bargaining councils to be established and registered with the aim of facilitating worker participation and decision-making in the workplace To entrench the right to strike, encourage sectoral and enterprise bargaining and clarify unfair dismissals and information disclosure |
| Broad-Based Black Economic | To establish a legislative framework for the promotion of |

| | |
|------------------------|---|
| Empowerment Act (2003) | black economic empowerment; to empower the Minister to issue codes of good practice and to publish transformation charters; to establish the Black Economic Advisory Council; and to provide for matters connected therewith. |
|------------------------|---|

Source: Haydam (2002: 32-33) and Broad-Based Black Economic Empowerment Act, 2003 (www.gov.za.).

The policy of BEE is intended “to promote the achievement of the constitutional right to equality, increase broad-based and effective participation of black people in the economy and promote a higher growth rate, increased employment and more equitable income distribution” (Broad-Based BEE bill, 2003). In addition to the numerous laws presented in table 1, the Broad-Based Black Economic Empowerment Act No. 53 of 2003 empowers the Minister to issue codes of good practice and to publish transformation charters. “Charters are negotiated agreements between business, labour and the government aimed at guiding transformation. They also guide private and public sector leverage – they can be powerful tools, but need to be constantly watched. And debate on the charters is essential” (Bungane and Brown, 2004: 23). Bungane and Brown (2004: 23) explain that through their involvement in designing the charters, all stakeholders (in the mining, liquid fuels, financial and maritime sectors) are duty-bound to implement the BEE framework, which each charter outlines.

On the 10th December 2003 representatives of the maritime industry met in Durban to formally sign South Africa’s Black Economic Empowerment (BEE) Charter for the maritime transport industry. Subsequently, both Morwe (2003), the CEO of South African Port Operations, and Radebe (2003) the then Minister of Public Enterprises, called for public contributions and debate on the maritime charter. Unfortunately, there has been very little public discussion or debate. Radebe (2003), at the launch of the Maritime Charter, stated that “we are more than keen to hear the views of all and sundry on how we can make the system work better for the benefit of the whole country...”. In response to this calling, section five initiates a constructive critique of the maritime charter’s long-term vision.

5. THE BEE MARITIME CHARTER: A CRITIQUE

The maritime charter's long-term vision should provide direction for all stakeholders to channel their efforts towards the same sustainable transformation goals. The charter's long-term vision should be in the best interests of not only the shipping (maritime) industry but ultimately South Africa as a whole. Furthermore, the transformation, development and growth intended by the empowerment charters are envisioned to be broad-based and sustainable. Mindful of these broad goals, the sound principles of economic freedom and maritime policy, and the currently rather liberal South African maritime policy, this section initiates a constructive critique of the maritime charter's long-term vision.

In general, Charters have obvious constraints, as recent criticism reveal (Bungane & Brown, 2004: 23):

- “Charters are relatively ‘short’ processes encapsulated in written form – but no matter what, the targets, institutions and the people don’t change that easily.
- Charters are instruments of negotiation, where give and take means that everybody wins something but may lose something as well.
- More often than not, charter discussions encompass diverse and large sectors, so that common thresholds or an industry mean against which to set targets seldom capture the interests of all stakeholders.”

In addition to these general constraints faced by Charters, one particular recommendation of the Charter – that a significant part of South Africa's trade be carried in South African ships – deserves closer scrutiny.

Even though South Africa has a large trade volume, this large volume does not necessarily mean that it has a competitive advantage in the transportation of those goods! Why South Africa may not have a competitive advantage in shipping is discussed shortly, but first consider the suggested means and shorter term goals suggested to achieve this vision. The specific recommendations are as follows:

2.3.1 To promote a collaborative relationship with organisations such as Proudly South Africa (PSA) and stakeholders in the mining and liquid fuels industries (The Ship South African Campaign) to persuade local cargo owners to increase the cargo carried on South African ships to 25,1% of the total within the next 5 years subject to review on an annual basis. Within 5 years, SA companies with particular focus on BEE companies should broker 25,1% of all cargo handled by brokers within the next 5 years, subject to review on an annual basis.”

2.3.2 The new mining and liquid fuels industry leadership should place shipping on the agenda as part of their strategic level discussions on export and import programmes. These industries are well positioned to facilitate the utilisation of black shipping service providers in joint ventures with established companies. *What we are calling for is a clear strategy/plan for the majority of South African cargo, going through South African ports to be carried on South African ships.*

(BEE Charter MTI, 2003, emphasis added).

The nationalist sentiments expressed in the long term vision and short term goals of the BEE Maritime Charter are similar to policies that have been tried and tested globally in both developed and developing countries. In many instances, however, these national shipping policies were found wanting (Sletmo, 2002).

5.1 WORLDWIDE EVIDENCE ON FLAG REGISTRATION, CARGO RESERVATION AND COMPETITIVE ADVANTAGE

Issues like cargo reservation and national flag registration, up to the late 1960s were investigated by Horn (1969: 246) who conclusively disproved the old “trade follows the flag” doctrine and suggests there may be a stronger case for the opposite doctrine, that “the flag follows trade”. Horn (1969: 246) concluded that “the widespread preoccupation with the share of national shipping in the carriage of a country’s foreign trade is irrelevant.... To try by artificial means to stimulate the share of national shipping will be an interference with market forces, leading away from efficiency and towards bilateralism.... Theoretically, it would be feasible to bilaterate world shipping, but only at an extremely heavy over-all cost in terms of inefficiency, excess capacity and higher freight rates. My feeling is that such a “balkanisation” of world shipping would certainly be a retrograde step.”

One might argue that things may have changed since Horn (1969) came to these conclusions. I agree. Turning to the literature of the 21st century with distinguished authors like Hoffman (2004) and Sletmo (2001, 2002 in Hoffman, 2004), it is clear that developments in the global maritime industry have led these authors to believe that there are no loner “maritime nations”, that is, “nations with a nationally flagged, built, operated and manned fleet, but, instead, countries are maintaining a participation only in certain parts of the industry, depending on their comparative advantages” (Hoffman, 2004: 2). A country is said to have a comparative advantage in producing a good (or service) if the opportunity cost – that is, the value of the best alternative foregone – for producing the good is lower domestically than in a foreign country. Hoffman (2004) also explains that “it is not the Nations that trade most that also provide the transport services. National trade is not being transported by nationally owned, or operated, or flagged ships. In fact, the vessel owner, its operator, and its flag are likely to come from three different countries. Even if a country is a strong trader and a strong supplier of maritime transport services, it is most likely that the national trade is not being transported by the national shipping company” (Hoffman, 2004: 2). Clearly, the vision and goals of the maritime charter lie in contrast with these contemporary global maritime practices.

It is true that countries ranging from Benin to India have cargo reservation policies that at least nominally restrict the scope for trade (World Bank, 2001: 112). There was a time when even UNCTAD promoted a form of multilateral cargo reservation under the UNCTAD Liner Code of Conduct – conceived to encourage the development of the shipping industry in developing countries by guaranteeing domestic lines a 40 per cent share of traffic (World Bank, 2001: 112). West Africa, for instance, made an attempt to implement this formula and promote their shipping industry. The results from West Africa, however, were dismal and detrimental to the development and growth of these economies (Palsson, 1998 and Sletmo, 2002). Consequently, UNCTAD is currently undergoing a re-evaluation of the usefulness of the cargo sharing formula and, presumably, will conclude that “shipping and transportation are services to international

trade and not a basic industry of national importance in and by itself. This way, shipping will be viewed as a means to an end – i.e. trade rather than a status developing nations need to achieve. Thus, who physically renders transportation service becomes less important than the efficiency, costs and service the market will decide are rational” (Palsson, 1998: 2).

The World Bank (2001: 112) believes that “Cargo reservation schemes have probably declined in significance, as more and more countries have phased them out. In addition, the increased transfer of ships to open registries to enable the ship owners to benefit from more efficient cost conditions has further diluted the importance of cargo sharing.” Similarly, Sletmo (2002: 477) states that: “Logically, shipping policy in its traditional form based on perceived national needs and aimed at maximising the size of national fleets through promotional and protectionistic means, should be dead.” In stark contrast to such thinking, the Maritime Charter calls for “a clear strategy/plan for the majority of South African cargo, going through South African ports to be carried on South African ships” (BEE MTI, 2003: clause 2.3.2).

Sletmo (2002: 485-492) investigated the context and national shipping policy of Canada, China and West Africa. Of the three examples, the experience of Canada may guide South Africa on a way forward towards the successful transformation of the shipping industry. In Canada it was evident that exporters were determined to prevent any form of national support for a Canadian flag fleet (Sletmo, 2002: 485-487). Their opposition was based on the fear that directly or indirectly, they would be made to bear the cost of any such “promotional” or protectionist policies. In essence the Canadian exporters’ argument was: “you may create a few jobs in shipping, but for each job so created, we will lose many more jobs in our exporting industries” (Sletmo, 2002: 286)¹. It would be understandable if South African exporters harboured fears that either directly, or indirectly, they may be made to bear the cost of any such “promotional” or future protectionist policies. Furthermore, the lobbies of exporters and resource industries in South Africa far outweigh the potential pressures from the maritime sector. Interestingly, after the investigation of a maritime task team, it was decided that Canada – like most OECD Countries – has no competitive advantage in shipping and has come to accept its need to rely on open markets to supply its shipping services. Being part of a large trade system with massive amounts of cargoes, Canada benefits from aggressive competition among ports, shipping lines and other suppliers of logistics services (Sletmo, 2002: 491). One important legislative spin-off from the Canadian Task Force Report was the creation of a fiscal environment conducive to the establishment and maintenance of international ship management activities in Canada. Although at first strongly resisted by the Canadian Minister of Finance, amendments to their income tax were ultimately made and there are at least 25 shipping groups in Canada that have taken advantage of the changes in the tax law (Sletmo, 2002: 487). Could the experience of Canada perhaps be a guide for the successful transformation of South Africa’s shipping industry rather than the current vision and goals suggested in the Maritime Charter?

5.2 ARE SOUTH AFRICAN FLAGGED SHIPS AT A COMPETITIVE DISADVANTAGE?

In 1987, South Africa’s maritime fiscal policy was found to be a supportive one, “broadly comparable with the tax and incentives parameters facing western shipowners”

(Jones, 1987: viii). Consequently, no major policy changes were recommended. The sole suggested addition was to make tax allowances available where attempts to camouflage *de facto* South African vessel ownership (due to sanctions resulting from apartheid) imposed higher costs on the shipowner (Jones, 1987: viii). Since that time, the fiscal environment facing the international shipping industry has changed dramatically and that facing South African shipowners is no longer as supportive as it once was (Chasomeris, 2000: 65-76). At present more than 70 per cent of the international shipping industry operates without paying normal income tax, and in addition, the shipping industry is considered more sensitive to the level of taxation than others owing to the enormous cost of ship replacement. There was a time in the 1980s when the South African fiscal policy environment was considered supportive and broadly comparable with the tax and incentives facing western shipowners; but the international shipping arena has moved on, leaving South African shipowners and operators to compete internationally on an inequitable fiscal basis.

Chasomeris (2000, 65-90), gave a critical review of the South African tax environment, and argued that the present tax structure in the context of the international shipping arena is unsatisfactory. South African companies currently pay a proportional tax rate of 29 per cent and a secondary tax on companies (STC, a dividend tax) of 12.5 per cent, resulting in an effective corporate tax rate of 36.89 per cent. There are accelerated depreciation provisions, but such provisions embody an element of subsidy, yield comparatively little tax, and in traditional policy frameworks offers little to attract companies or investors². South Africa's re-entry into the international mainstream trading community has the potential to create opportunities for a strengthening and expansion of the country's maritime community. One way of helping to achieve this could be through the introduction of a tonnage tax. A tonnage-based corporate tax (commonly referred to as tonnage tax) contrasts with the generic corporation tax system under which a company's tax liability is based on the commercial profits that the company has made in the year. It ignores actual profit and instead computes a notional profit on the basis of the number and size of ships operated and taxes this profit, rather than the commercial profit, at the normal corporation tax rate. The tonnage rate is generally set so that notional profits, and hence actual corporation tax paid, are minimal. The mechanism seems to be an ingenious device for obtaining virtual tax exemption compatible with international tax treaty obligations. It departs from normal corporation tax principles of taxing actual profits to introduce a notional basis which bears no relationship to actual profits earned. It is widely recognised as a sensible and pragmatic way of achieving a low-tax regime, and is being implemented by some leading maritime nations (see Chasomeris, 2000).

The Ship Registration Act of 1998 enhanced the eligibility of shipowners to register their ships in South Africa without the loss of the "genuine link" required under the 1982 Law of the Sea Convention. The Ship Registration Act, however, is only the first step in making the South African register attractive enough to bring its own prodigal owners back onto the flag, and possibly even lure foreign owners into the environment of a low-valued rand. Whilst these legislative measures are most certainly a step in the right direction, it is fiscal measures, including the creation of a competitive tax environment, which will have a greater impact on the success of South Africa's maritime policy initiatives. It is this context which leads Hare, the chairman of the Maritime Transport Policy Working Group to state that "...negotiating a competitive tax regime for ship operation will be one of the greatest challenges yet to come before the distinctive South

African flag is seen fluttering from too many more taffrails” (Lloyd’s List Africa Weekly, 1998: 4). Likewise, Chasomeris (2000: 98) concluded that “the evidence suggests that without seriously addressing the South African fiscal shipping environment, there is little prospect of creating a level playing field which is necessary for South African shipowners and operators to compete internationally.... A comprehensive package of policy measures needs to be put in place with a tonnage tax as a key policy.... With an improved fiscal environment, a more cohesive set of partnerships between traders, carriers, the financial sector and the state should result, and these in turn are likely to confer significant benefits on the wider South African economy.”

Despite a decade of democracy and an improved legal environment brought about by the Ship Registration Act of 1998, the South African merchant marine has continued to decline. Of the six deepsea container ships flying the South African flag in February of 2000, only one remains (Safmarine Oranje) as of March 2004, but this vessel is no longer beneficially owned by a South African company (SAMSA, 2004). On the other hand, South African companies presently control (either through direct ownership or long-term charter) an estimated seventy mainly bulk-oriented vessels with an aggregate carrying capacity of roughly 2.45 million deadweight tons (dwt), or approximately 0.3 per cent of global carrying capacity that the ISL estimated at 816 million dwt in 2003 (Jones, 2004). These vessels are not flagged in South Africa and are hence able to take advantage of the many benefits associated with open registers (Marlow, 2002: 524).

In summary, the long-term vision of the maritime charter and short terms means identified to achieve the vision should be further clarified and debated. To promote the South African shipping industry, create more South African shipping companies and attract vessels to the South African flag, it is clearly necessary to reconsider South Africa’s maritime fiscal policy.

Although an equitable fiscal policy environment may be considered necessary to attract ships onto the South African register, I do not believe that it will be sufficient. Rather, South Africa, that is, South African companies would need to have (or be able to create) a comparative advantage in ship owning, operation and registration. Bergantino and Marlow (1998 in Marlow, 2002: 524) explain that flagging out is primarily caused by the desire to minimise costs by placing the vessel under a relatively low cost regime and estimated that crew cost differences between selected EU flags and lower-cost open registry vessels range from +22% to +333%. Even though the primary reason for flagging out is generally accepted as being the need to reduce overall costs (Marlow, 2002: 524), Bergantino and Marlow (1998 in Marlow, 2002: 524) mention that other reasons for choosing a foreign flag may include: “the desire for less bureaucratic control, the need to ensure the availability of skilled labour, the high costs of compliance with national flag standards, fiscal considerations, trading routes and historical reasons.” For each of these additional considerations, South African flagged vessels may well be at a competitive disadvantage compared to lower-cost open registry vessels. Further empirical investigation is required.

So how, then, in the context of a less competitive South African ship register, could it be possible to achieve the Charters vision “to substantially increase the number of SA flagged vessels and develop new South African shipping companies that are globally competitive”? One means to achieve this vision, although extremely controversial, could

be the introduction of cabotage on South Africa's coastal trades. The reservation of the coasting trade of a country for ships operating under the flag of that country, cabotage, does not currently apply in South Africa. There are some in the shipping industry, however, who have recently motivated for cabotage legislation. Mayer (2004), cites the labour-related issues, fiscal measures, and the ranking of creditors' claims against the proceeds of a sale of vessel under the Admiralty Jurisdiction Regulation Act., as some of the reasons for the paucity of South African flagged vessels. She concludes that cabotage would be necessary to render the flag more appealing and internationally competitive.

The South African government has made a commitment to improve the effectiveness and efficiency of the entire transport chain in an attempt to reduce the overall costs of doing business in and from South Africa. Huge capital expenditures and upgrades are anticipated for the ports, rail and pipelines over the next five years. Additionally, the port costs for 2005 are strategically designed to increase by 3.1 per cent, that is, below core inflation, representing a real reduction in the costs of maritime transport (NPA, 2004). Nonetheless, South Africa's geographical location is positioned far from her most important trading partners. Furthermore, about 98 per cent of exports, by volume, are seaborne (Naudé, 1999). Wefa (in Preece, 2004: 53) estimates that commodities and commodity derived products together are still responsible for 60 to 65 per cent of all South Africa's physical exports, excluding services. More importantly, the generally poor performance of commodity prices has led to a decline in South Africa's world export market share (Moola in Preece, 2004: 53). Hence, similar to the case of New Zealand: "price competitiveness of shipping is a key determinant in determining the success in an export market or whether the exporter is in the export market at all!" Cavana (2004: 182).

If the country's policy makers begin to take seriously the proposals to introduce cabotage, they should first investigate the pros and cons of cabotage. Cavana's (2004: 193) New Zealand study lists these as follows:

"Pros

- It is sustainable;
- Is used by major trading partners;
- Breaks no international treaties;
- Is easy to implement and remove;
- It removes the inequitable competition of foreign flag shipping;
- All three domestic transport modes will benefit from the availability of greater volumes of cargo;
- Gives support to domestic shipping, road and rail services;
- Lessens the dependence on overseas shipping;
- Provides the potential to maximise participation in coastal shipping services;
- Makes shipping services from the South Island more sustainable;
- Is less cost to the government than tax concessions to shipping in isolation;
- It gives more certainty in planning for domestic operations;
- Has the potential to preserve and provide employment for seafarers;
- Assists employment in the maritime infrastructure by providing expertise for the maritime services;
- Regulates the importation of foreign labour; and
- It could be a springboard for trans-Tasman and international operations.

Cons

- It is not clear how and when any additional employment opportunities will eventuate;
- There is a potential for a downstream negative impact on employment in general;
- There is no indication that increased investment in the shipping industry will result;
- The ability will be lost to take advantage of present marginal cost services to reduce supply chain costs to New Zealand traders;
- Evidence suggests there will be increased freight charges in the domestic trade; and
- There will be reduced competition and service levels on those legs covered at present by foreign operators.”

Cavana concluded that the introduction of cabotage would have an overall net negative impact on New Zealand.

Job creation is an important argument used both for and against measures like cabotage, preferential shipping tax benefits, and other measures to support the local shipping industry. In South Africa - where jobless growth has resulted in broadly-defined unemployment rates of around forty per cent, and half the population still lives below the poverty line - the need to create jobs is vital. From an international trade economist's perspective, however, Krugman (1993) explains that the level of employment is a macroeconomic issue, depending in the short run on aggregate demand and in the long run on the natural rate of unemployment. He concludes that: “Trade policy should be debated in terms of its impact on efficiency, not in terms of phoney numbers about jobs created or lost.” These views should be considered as South Africa continues the debate on measures to transform the shipping industry.

Despite nine drafts, some of the concepts, definitions and time frames used in the Maritime Charter require additional thought and clarification. These include the following.

- Many of the black empowerment objectives have been set time frames of approximately five to ten years. Yet the proposed targets, timeframes and weightings on the BEE scorecard will be reviewed every 2.5 years and subject to change by an independent Peer Review Mechanism (BEE MTI, 2003: 20).
- What is really meant by “25.1% of the total within the next five years?” Is this 25.1 per cent measured by value or by volume? What is meant by “the total?”
- Furthermore, the vision (BEE MTI, 2003: clause 1.5) to “develop South Africa to become one of the world's top 35 *maritime nations* by the year 2014” is not only unclear in terms of what it means to be a “maritime nation” but, unfortunately, I have not seen convincing evidence to suggest that the vision is in the best interests of South Africa.

South Africa's isolation brought about during apartheid and economic sanctions has left many South African companies without a desire and/or ability to become involved in the maritime transportation of their goods. The general aversion by many South African exporters to become involved in the transportation of their cargo and lack of “sea-mindedness” (Jones and Kennedy, 1991) presents a significant challenge to the proposed “Ship South Africa Campaign”. Lushnikov (2003) investigated the terms of shipment of

dry-bulk exports from the Port of Richards Bay and found that about 82 per cent of the volume of surveyed cargo was shipped on free on board (fob) terms of shipment. Hence, of the total dry-bulk cargo shipped, less than 18 per cent was shipped on cost insurance and freight (cif) arrangements where the bulk exporters have the right to designate the ship. The fact that the vast majority of bulk cargo is shipped from South African ports on fob terms of shipment means that the majority of exporters do not have the legal right to elect the vessel. Consequently, the majority of South African exporters do not have the legal right to appoint a “South African ship” to carry the exported cargo³. Circumstances like these have led Jones (2004) to conclude that South Africa “remains a nation of miners, manufacturers and farmers, not a nation of shippers, ship operators or ship owners.”

6. CONCLUSIONS AND WAY FORWARD

This article investigated South Africa’s maritime policy and provided a critique of the long-term vision of the BEE Maritime Charter to transform the national shipping industry. Currently, South Africa’s liberal shipping policy has no Cabotage rules; no multilateral, bilateral or unilateral cargo reservation; no flag preference or flag discrimination; and no attempt is made to influence the terms of shipment of exports and imports. Despite a decade of democracy, sustained sea-trade growth, and an improved legal environment brought about by the Ship Registration Act of 1998, South Africa’s merchant marine has continued to decline. An important reason for the decline is that ships registered under the South African flag are currently at a competitive disadvantage, largely because of South Africa’s less favourable shipping tax system as compared with vessels under most other registers worldwide. With currently little prospect of changing South Africa’s shipping tax environment, alternative promotional and perhaps protectionist measures may need to be pursued to achieve the Charter’s long-term visions and goals. Cargo reservation and/or cabotage may be effective in attracting vessels to the less competitive South African ship register. These promotional and protectionist shipping policies, however, are not consistent with both the international and, more importantly, national policy drive towards: the promotion of competitive markets and economic freedom; lower transportation and transaction costs; reducing inequality through promoting broad-based empowerment; and increasing liberalisation of both trade and services. Despite nine drafts, South Africa’s maritime charter clearly requires further clarity, thought and more open debate.

I propose a Task Force be appointed with members who represent a cross-section of shipowners, labour, users of shipping services (importers and exporters), and academics, similar to the Canadian Task Force (Sletmo, 2002). The purpose of the Task Force would be to evaluate changing conditions in the international shipping market and the possible need for measures to encourage the expansion of the South African shipping fleet. Additionally, all stakeholders who can affect or are affected by South Africa’s shipping policy should be encouraged to make formal contributions. The findings of this Task Force should provide the necessary insight and foresight to ensure an appropriate vision which looks beyond the short-term desires of a minority and considers the needs of the wider South African economy.

NOTES

1. While no hard proof for this position was offered, it carried a lot of weight (Sletmo, 2002: 486).
2. For ships acquired before 1 April 1995 the accelerated depreciation allowed was 40 per cent in the first year, and 10 per cent thereafter. Ships acquired on or after 1 April 1995 face a new set of depreciation laws that allow for 20 per cent straight line depreciation (Meyerowitz, 1999: 24.4).
3. This phenomenon is largely due to the nature of the exported cargo, the lack of sea-mindedness (see Jones and Kennedy, 1991) and historical disadvantages created under economic sanctions on South African traders and vessel owners/operators (see Lushnikov, 2003 for an in-depth investigation into South Africa's terms of shipment in dry bulk exports).

REFERENCES

- BEE MTI (2003) "Broad-Based Black Economic Empowerment Charter for the Maritime Transport Industry", at www.sacob.co.za/Transport&Maritime/bee_charter_july.pdf.
- Bungane, K. and Brown, A. (2004) "Flawed – but a step forward" in *Economy and Business, Mail & Guardian*, April 8 to 15.
- Chasomeris, M. G. (2000) "The Potential Benefits of a Tonnage-Based Corporate Tax to South Africa and the South African Shipping Industry." University of Natal, Durban. Unpublished master's thesis.
- Chasomeris, M. G. (2003) "South Africa's Seaborne Commerce: Trade Flows, Transport Costs and the Maritime Transport Policy Environment", School of Maritime Studies, Durban: University of Natal.
- Department of Transport (1995) Maritime Transport Policy Working Group. Report to Plenary No. 1, July, Government Printer: Pretoria.
- Du Toit J. (2002) "The Structure of the South African Economy." The SA Financial Sector Forum: Rivonia.
- Floor, B. C. (1993), "Report of the Committee of Enquiry into a National Maritime Policy for the Republic of South Africa (Floor Report)", Annexure C: Clause 2.7, Republic of South Africa.
- Haydam N. (2002) *The Principles of Macroeconomics*. Second Edition, Van Schaik Publishers: Pretoria.
- Horn, J. (1969) "Nationalism Versus Internationalism in shipping", in *Journal of Transport Economics and Policy*, September.
- Hoffman, J. (2004) "The Process of Concentration in Shipping: Why and How Countries are Specializing in Different Maritime Businesses." Presented to KTRA, 3rd Interntaional Gwangyang Port Forum, Korea, April.
- ISL (2002) *Shipping Statistics Yearbook – 2002*. Institut fur Schifffahrtswirtschaft and Logistik, Bremen.
- Jones, T. (1987) "The international shipping industry and South Africa's seaborne trade." Technical Report RT/78. National Institute for Transport and Road Research, CSIR, Pretoria.
- Jones, T and Kennedy, (1991) "The Terms of Shipment of South African Seaborne Trade", Council for Scientific and Industrial Research, Pretoria.

- Jones, T. (2002a) Economic of Ports and Harbours: Notes, mimeo Durban: University of Natal.
- Jones, T. (2002b) "The South African Freight Transport Sector", in *The Decline of the South African Economy*, Ed. Jones, S., Pretoria: UNISA.
- Jones, T. (2004) "The South African Maritime Industry: An Overview", mimeo, Howard College: University of KwaZulu-Natal.
- Krugman, P. (1993) "What do Undergrads Need to Know About Trade", *American Economic Review*, May, Vol. 83, No. 2, pp. 23-26.
- Lloyds List Africa Weekly, (1998) "South African ship registration casts off its historic shackles", No. 178, November, p. 4.
- Lushnikov (2003). *A Critical Analysis of the International Terms of Shipment in Dry-Bulk Exports from the Port of Richards Bay*. Unpublished masters thesis, University of Natal, Durban.
- Marlow, P. (2002) "Ships, Flags and Taxes", in *The Handbook of Maritime Economics and Business*, by Grammenos, C. TH. (Ed.) MPG, pp. 512-529.
- Meyer, C. (2004) "Cabotage – An incentive for local ship registration?" in *Maritime Southern Africa*, November/December, pp. 22.
- Meyerowitz, D. (1999) *Meyerowitz on Income Tax*. The Rustica Press: Ndabeni.
- Morwe, T., (2003) "The Business of Modern Ports." Presentation by Morwe, the CEO of South African Port Operations, at The Royal Hotel, Durban, August 21st.
- Naudé, W., (1999) "The Impact of International Transport Costs on the Exports of a Developing Country: The Case Study of South Africa." Presented at the TIPS Annual Forum at Glenburn Lodge, Muldersdrift, 19-22 September.
- NPA (2004) *Electronic Newsletter of the National Ports Authority of South Africa*. www.npa.co.za.
- Palsson, G. (1998) "Multiple Ports of Call versus Hub-and-Spoke. Containerised Maritime Trade between West Africa and Europe." *Sub-Saharan Africa Transport Policy Program*. The World Bank and Economic Commission for Africa. SSATP Working Paper No. 31, January. Africa Region The World Bank.
- Ports of Southern Africa and Mauritius, (2003) *Harbour Reference Guide*, CD Duplications, 54th Edition.
- Preece, H. (2004) "Twist of fortune. SA hit by downturn in commodity prices", in *Finance Week*, 7th July.
- Radebe (2003) "Address by Jeff Radebe at the Maritime Transport Industry BEE Indaba" in Durban, 26th September. <http://www.transport.gov.za/comm-centre/sp/2003/sp0926.html>.
- SAMSA (2004) *South African Maritime Safety Authority Annual Report*, Cape Town.
- Siko, M. (1996) "South Africa's Maritime Interest and Responsibilities" in *African Security Review* Vol. 5 No. 2.
- Sletmo, G. K. (2002) "The Rise and Fall of National Shipping Policies", in *The Handbook of Maritime Economics and Business*, by Grammenos, C. TH. (Ed.) MPG, pp. 471-493.
- Stopford, M. (1997) *Maritime Economics*. Second Edition. Routledge: London.
- Sturmey, S. G. (1965) "National Shipping Policies" in *The Journal of Industrial Economics*, Vol. 14, No. 1, November, pp. 14-29.
- World Bank, (2001) "Transport Services: Reducing Barriers to Trade", Chapter 4 of the *World Global Economic Prospects*, pp. 97-127, <http://www.aercafrica.org/publications/GEPchapter4/>.